IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 4TH AUGUST 2006 / 13TH SRAVANA 1928

ST.Rev..No. 74 of 2004()

TA.51/2001 of S.T.A.T.ADDL.BENCH,ERNAKULAM
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REVISION PETITIONER/ASSESSEE/APPELLANT.

HALEEMA ZUBAIR,
TROPICAL TRADERS,
P..USHA ROAD,
ERNAKULAM.

BY ADV. SMT.S.K.DEVI
SRI.M.RAJ MOHAN

RESPONDENT: REVENUE/RESPONDENT.

STATE OF KERALA REP. BY ITS
FINANCE SECRETARY,
SECRETARY,
SERCRETARIAT,
TRIVANDRUM.

BY GOVERNMENT PLEADER SRI. GEORGEKUTTY MATHEW.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 04/08/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.N. RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

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that the Assessing Officer did not establish the receipts as representing sales turn over of goods. However, on appeal by the State, the Tribunal restored the addition, as petitioner failed to establish the nature of receipt as not sales turn over before the Tribunal also.

2. We have heard learned counsel for the petitioner and the Government Pleader appearing for the respondent.

3. Petitioner is admittedly dealing in ceramic products during the year and the petitioner accounted in addition to declared sales price, receipt of Rs.45,80,168/- from a sister concern M/s. Poseidon Food Company. Even though the petitioner put up a specific case that the receipt represents service charges and commission for arranging buyers, testing and quality certification of marine products, petitioner has not produced any agreement with exporters or foreign buyers involved in the transaction or details or proof of any network such as office, staff, lab etc., for effectively carrying out the business. In the absence of any document, the Tribunal restored the addition after reversing the order of the first appellate authority. Even before us, petitioner has not produced any agreement or accounts giving the

particulars of the receipts. Having regard to the amount involved, we are sure that the transaction would have passed through bank account and if any amount represents commission is received from foreign buyers, then the same would have been remitted through bank and we see no reason why the petitioner kept the department in dark about the financial transaction. In the absence of any proof, even at this stage, the only question to be considered is what is the consequence of an unexplained credit in a traders' account for the purpose of sales tax. We have to straightaway refer to Section 12 of the KGST Act, which reads as follows:

> "**12. Burden of proof**:-(1)The burden of proving that any transaction of a dealer is not liable to tax under this Act shall lie on such dealer."

It is obvious from the above that a dealer has to explain his transactions, which includes a credit entry in the account.

4. Even though Section does not provide a presumption that such unexplained amount represents sales turn over, we have no doubt in our mind that the Assessing Officer is free to consider what exactly is the nature of receipt. If it is a net credit in the form of an income, it may

even be possible for the officer to take it as income, gross up the turn over as representing unaccounted sales and assess the same. In this case, the officer has taken the amount as unaccounted sales, which is probably the minimum damage that could be caused to the petitioner by virtue of Section 12 of the Act. In other words, we uphold this addition as a necessary consequence of the petitioner's failure to explain the receipt in his account.

In the circumstances, we are of the view that the first appellate authority throughly went wrong in casting burden on the Assessing Officer to establish the amount received by the petitioner as sales turn over of goods and so much so, the Tribunal rightly reversed the order and restored the assessment.

Sales Tax Revision Case is accordingly dismissed.

(C.N.RAMACHANDRAN NAIR, JUDGE)

(K.M. JOSEPH, JUDGE)

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K.S.RADHAKRISHNAN & K.M.JOSEPH, JJ.

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